

The opinion in support of the decision being entered today was **not** written for publication and is **not** precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUKI SUZAWA, HIROYUKI ARIOKA,
and TOMOKI USHIDA

Appeal No. 2003-1861
Application No. 09/551,537

HEARD: February 19, 2004

Before PAK, DELMENDO and PAWLIKOWSKI, **Administrative Patent Judges.**

PAWLIKOWSKI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-5.

Claims 1, 2, and 5 are representative of the subject matter on appeal and are set forth below:

1. A process for producing an optical recording medium containing an organic solvent in an organic dye layer in an amount of 2 to 15% by weight based on an organic dye, the process comprising applying a solution, prepared by dissolving the organic dye in the organic solvent, onto a light-transmittable substrate by a spin coating method to form the organic

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dye layer, thereafter forming a reflecting layer on the organic dye layer without performing a drying treatment of the organic solvent left in the organic dye layer and further forming a protective layer on the reflecting layer.

2. A process for producing an optical recording medium according to claim 1, wherein the spin coating is performed at a rotating speed of 3500 rpm or more in the formation of the organic dye layer.

5. An optical recording medium according to Claims 3 or 4, wherein said organic solvent is mainly 2,2,3,3-tetrafluoro-1-propanol.

Claims 1, 3, and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hurditch.

Claims 2 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hurditch in view of Cunningham.

On pages 3-4 of the brief, appellants set forth their grouping of the claims. To the extent that a claim is argued separately, we will consider such claim in this appeal. See 37 CFR § 1.192(c)(7) and (8)(2003).

OPINION

I. The 35 U.S.C. § 103 rejection of claims 1, 3, and 4 as being unpatentable over Hurditch¹

Beginning on page 5 of the brief, appellants argue that both claims 1 and 3 require that the organic solvent, which is

¹We observe that on page 5 of the brief, appellants indicate that this rejection is under 35 U.S.C. § 102(e). We believe this is an inadvertent error because appellants argue this rejection on the issue of obviousness.

contained in the organic dye layer, is in an amount of 2% to about 15% by weight, based on the organic dye. On page 6 of the brief, appellants argue that Hurditch discloses that the recording layer is formed by dissolving the dye mixture together with any additional nickel stabilizer in a coating solvent at a concentration in the range of 2-10%. Appellants argue that this amount therefore includes a nickel stabilizer.

We find, in column 10, at lines 15-17 of Hurditch, that Hurditch indicates that the amount of nickel stabilizer can be from about 1 to 25% by weight. If, for example, the amount of about 1% by weight of nickel stabilizer is chosen, then the amount of organic solvent would be as much as about 9%, which falls within appellants' claimed range of from 2 to 15%. Therefore, we are not convinced by appellants' arguments in this regard.

Appellants further argue that their claim 1 does not require performing a drying treatment step of the organic solvent. Appellants argue that Hurditch must require a drying treatment step because of the disclosure found at lines 9-10 of column 11 of Hurditch. Appellants argue that this disclosure indicates that because the drying is additional, then it must be in addition to any drying that is already occurring or has already occurred.

We disagree with this interpretation of Hurditch and we refer to the examiner's comments found on pages 5-6 of the answer. Here, the examiner correctly states that there is nothing in Hurditch that discloses additional drying or an initial drying. We agree. An optional drying step to further remove residual solvent does not suggest or mean that another drying step must have occurred or is already occurring.

In the reply brief, appellants set forth similar arguments as set forth in their brief. Appellants additionally specifically argue the rejection of claims 2 and 5 under 35 U.S.C. § 103 as being obvious over Hurditch in view of Cunningham. Appellants argue that the examiner continues to misread and misinterpret Hurditch for the reasons discussed above. We disagree for the same reasons as stated above.

Appellants argue that the rotating speeds are recited in claim 2. Appellants argue that Cunningham does not make up for the deficiencies of Hurditch in connection with the amount of organic solvent in the organic dye layer and the absence of a drying treatment.

The examiner relies upon Cunningham for appellants' particularly claimed solvent of 2,2,3,3-tetrafluoro-propanol. The examiner further states, and the appellants do not dispute in the brief, that the claimed rotating speed of 3500 rpm is a choice based upon determining, through routine experimentation, a workable or even optimum range of rotating speeds, a result-effective variable. Absent any evidence of any criticality of the particularly claimed rotating speed of 3500 rpm, we agree with the examiner that the subject matter would have been obvious to one of ordinary skill in the art.

In view of the above, we affirm each of the rejections.


II. Conclusion

The rejection of claims 1, 3, and 4 under 35 U.S.C. § 103 as being unpatentable over Hurditch is affirmed.

The rejection of claims 2 and 5 under 35 U.S.C. § 103 as being unpatentable over Hurditch in view of Cunningham is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


CHUNG K. PAK

Administrative Patent Judge

Romulo H. Delmendo
ROMULO H. DELMENDO

Administrative Patent Judge

Beverly A Lawrence

BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

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